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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,615	06/13/2001	Michael W. Johnson	S63.2-9949	7299

490 7590 04/12/2002

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER
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COZART, JERMIE E

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 04/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/880,615	JOHNSON, MICHAEL W.
	Examiner	Art Unit
	Jermie Cozart	3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 22 February 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 23-41 is/are pending in the application.

4a) Of the above claim(s) 31 and 41 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 23-30, and 32-40 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

***Election/Restrictions***

1. Applicant's election of claims 23-30 and 32-40 in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Objections***

2. Applicant is advised that should claim 27 be found allowable, claim 28 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily

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published under 35 U.S.C. 122(b). Therefore, this application is examined under 35

U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 23, 25, 26 29, 30, 32, 34, and 35 are rejected under 35 U.S.C. 102(e) as

being clearly anticipated by Yan (5,843,172).

Yan discloses a method of manufacturing a stent comprising providing a tube

having at least different axially spaced regions of different physical characteristics

(different pore sizes located along the stent), cutting the stent from the tube. A first

portion of the tube is characterized by a first porosity and second portion of the tube,

axially spaced from the first portion of the tube, is characterized by a second porosity

different from the first porosity. Yan also discloses the step of disposing a treatment

agent of the stent. The cutting step includes forming a plurality of openings (52), which

are elongate. The cutting step also includes forming a plurality of openings (68) whose

widths exceed their lengths. See column 2, lines 7-14, column 6, lines 61-column 7,

line 7, and column 7, lines 30-52. See also Figures 2, 6, and 8 for further clarification.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 24 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Yan 172 in view of Scott (5,903,815).

Yan`172 discloses all of the claimed subject matter except for a first portion of the tube being made from a first metal and a second portion of the tube, axially spaced from the first portion of the tube being made from a second metal different from the first metal.

Scott`815 discloses a first portion (25) of an article being made from a first metal (24) and a second portion (23) of the article, axially spaced from the first portion of the tube being made from a second metal (26) different from the first metal. See column 2, lines 11-44, column 3, line2 50-55, and Figure 3 for further clarification.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to form a first portion of the tube of Yan from a first metal and a second portion of the tube of Yan, axially spaced from the first portion of the tube from a second metal different from the first metal, in light of the teachings of Scott, in order to more effectively construct composite component having the desired strength qualities and physical characteristics.

7. Claims 27, 28, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yan in view of Gray et al.

Yan`172 discloses all of the claimed subject matter, specifically including cutting a metal tube into a desired shape.

Yan`172, however, does not disclose the stent including a plurality of serpentine segments extending about the circumference of the stent, at least some of the openings being bounded at a proximal end by a first serpentine segment and at a distal end by a second serpentine segment, the openings which are bounded at a proximal end by a

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first serpentine segment and at a distal end by a second serpentine segment including a first side wall and a second side wall extending between and connecting the first and second serpentine segments, the first and second side walls being non-parallel to the longitudinal axis of the stent.

Gray discloses a stent including a plurality of serpentine segments (2) extending about the circumference of the stent, at least some of the openings being bounded at a proximal end by a first serpentine segment and at a distal end by a second serpentine segment, the openings which are bounded at a proximal end by a first serpentine segment and at a distal end by a second serpentine segment including a first side wall and a second side wall extending between and connecting the first and second serpentine segments, the first and second side walls being non-parallel to the longitudinal axis of the stent. See column 3, line 18 - column 4, line 64, and Figure 1B for further clarification.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to form the stent of Yan to include a plurality of serpentine segments extending about the circumference of the stent, at least some of the openings being bounded at a proximal end by a first serpentine segment and at a distal end by a second serpentine segment, the openings which are bounded at a proximal end by a first serpentine segment and at a distal end by a second serpentine segment including a first side wall and a second side wall extending between and connecting the first and second serpentine segments, the first and second side walls being non-parallel to the

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longitudinal axis of the stent, in light of the teachings of Gray et al., in order to more effectively form a stent with the desired shape and contour for use during an operation.

8. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yan`172 in view of Gray et al and Scott`815.

Yan`172 discloses all of the claimed subject matter except for at least some of the openings being bounded at a proximal end by a first serpentine segment made of a first metal and at a distal end by a second serpentine segment made of a second metal different from the first metal.

Gray discloses at least some of the openings being bounded at a proximal end by a first serpentine segment (2) and at a distal end by a second serpentine segment.

Scott`815 discloses an article being having proximal and distal ends being made from first metal and second metals, respectively, also different each other.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to form the stent of Yan to include at least some of the openings being bounded at a proximal end by a first serpentine segment and at a distal end by a second serpentine segment, in light of the teachings of Gray, and to form the proximal and distal ends from first metal and second metals, respectively, wherein the first and second metals are different from each other, in light of the teachings of Scott`815, in order to more effectively form a product into a contoured shape with the desired physical characteristics and qualities.

***Conclusion***

9. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information. M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, or fax (703) 872-9301 or by email to CustomerService3700@uspto.gov.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermie Cozart whose telephone number is 703-305-0126. The examiner can normally be reached on Monday-Thursday, 7:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

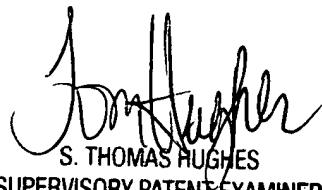
1148.

Other helpful telephone numbers are listed for applicant's benefit.

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S. THOMAS HUGHES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700



JC  
April 10, 2002